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Attorney for Plaintiff, JAMES M. KINDER, an individual

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JAMES M. KINDER,

Plaintiff,

v.

HARRAH'S ENTERTAINMENT, Inc.;
HARRAH'S OPERATING COMPANY,
Inc.; HARRAH'S MARKETING
SERVICES CORPORATION; HARRAH'S
LICENSE COMPANY, LLC; HARRAH'S
LAUGHLIN, Inc.; HBR REALTY
COMPANY, Inc. and DOES 1 through 100,
inclusive,

Defendants.

Case No. 07 CV 2132 DMS (AJB)
[Consolidated with 07CV2226 DMS (AJB)]

Judge: Hon. Dana M. Sabraw
Mag. Judge: Hon. Anthony J. Battaglia

**DECLARATION OF CHAD AUSTIN IN
SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS**

Date: April 25, 2008
Time: 1:30 p.m.
Courtroom: 10

I, CHAD AUSTIN, declare as follows:

1. I am an attorney at law duly licensed and admitted to practice before all courts of the State of California, the United States District Court, Southern District of California and the Ninth Circuit Court of Appeals and have been attorney of record for Plaintiff in this matter since its inception. If called as a witness, I could and would competently testify to all facts within my

1 personal knowledge except where stated on information and belief.

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3 2. I am fully familiar with all of the facts and circumstances surrounding this
4 case. This declaration is submitted in support of Plaintiff's Opposition to Defendants' Motion to
5 Dismiss. The matters stated in this declaration are true, of my own personal knowledge.
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8 3. Plaintiff has in his possession and I have personally listened to the tape recordings
9 of each and every call (7 in total) made by Defendants to Plaintiff's number assigned to a paging
10 service 619-999-9999, a San Diego, California wireless telephone number.
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13 4. One (1) of the unlawful prerecorded telemarketing calls complained of in this
14 action, which was made on October 26, 2006 at 7:24 p.m., included what clearly appeared to be a
15 man's prerecorded voice. The prerecorded voice message promoted the Harrah's Las Vegas
16 Casino. A true and correct verbatim transcript of that prerecorded message is attached hereto as
17 Exhibit B.
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20 5. On January 17, 2008, I accessed the FASTweb website, which publishes real
21 estate ownership information relating to properties around the United States. After doing a
22 "Property Profile" of 3475 Las Vegas Boulevard South, Las Vegas, Nevada, I found the
23 document a true and correct copy of which is attached hereto as Exhibit C. That document
24 names the owner of the property at said address, which is the address for the Harrah's Las Vegas
25 Casino in Las Vegas, Nevada, as "Harrah's Club." Also attached hereto and incorporated herein
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1 by reference is Exhibit D, a true and correct copy of the website for Harrah's Las Vegas Casino,
2 which lists its address as 3475 Las Vegas Boulevard South, Las Vegas, Nevada.

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4 6. On December 11, 2007, I accessed the website for the Nevada Secretary of State
5 and ran a search for "Harrah's Club." That search found the document a true and correct copy of
6 which is attached hereto as Exhibit E which states that Harrah's Club is no longer a valid entity
7 in the State of Nevada and that it merged into Harrah's Operating Company, Inc. effective
8 August 31, 1995.

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11 7. On January 17, 2008, I accessed the Business Portal part of the California
12 Secretary of State's website and ran a California Business Search for Harrah's Operating
13 Company, Inc. and found the document a true and correct copy of which is attached hereto as
14 Exhibit F. That document states that the "agent for service of process" for Harrah's Operating
15 Company, Inc. is "CORPORATION SERVICE COMPANY WHICH WILL DO BUSINESS IN
16 CALIFORNIA AS CSC – LAWYERS INCORPORATING SERVICE." The address for that
17 agent was listed as "PO BOX 526036 SACRAMENTO, CA 95852."

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21 8. On January 17, 2008, I accessed the Business Portal part of the California
22 Secretary of State's website and ran a California Business Search for Harrah's Marketing
23 Services Corporation and found the document a true and correct copy of which is attached hereto
24 as Exhibit G. That document states that the "agent for service of process" for Harrah's
25 Marketing Services Corporation is "CORPORATION SERVICE COMPANY WHICH WILL

1 DO BUSINESS IN CALIFORNIA AS CSC – LAWYERS INCORPORATING SERVICE.” The
2 address for that agent was listed as “PO BOX 526036 SACRAMENTO, CA 95852.”
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4 9. One (1) of the unlawful prerecorded telemarketing calls complained of in this
5 action, which was made on December 9, 2003 at 10:19 a.m., was what clearly appeared to be a
6 prerecorded telemarketing call. The prerecorded message stated that it was made on behalf of
7 “Harrah’s Rincon Casino,” located in Valley Center, San Diego County, California. My
8 investigation has revealed that the Harrah’s Rincon Casino is owned by the Rincon band of
9 Mission Indians and operated by one or more of several Harrah’s entities, including but not
10 necessarily limited to defendant HARRAH’S ENTERTAINMENT, Inc. (a Delaware
11 corporation), HARRAH’S OPERATING COMPANY, Inc. (a Delaware corporation),
12 HARRAH’S MARKETING SERVICES CORPORATION (a Nevada corporation) and
13 HARRAH’S LICENSE COMPANY, LLC (a Nevada limited liability company). However,
14 discovery will ultimately be required in order to determine exactly which Harrah’s entity operates
15 the Harrah’s Rincon Casino. A true and correct verbatim transcript of the December 9, 2003 at
16 10:19 a.m. call is attached hereto as Exhibit H.
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21 10. It is absolutely untrue that Plaintiff filed a “Declaration of James M. Kinder in
22 Support of Filing By Vexatious Litigant in” in *James M. Kinder v. Sprint PCS Assets, LLC, et*
23 *al.*, United States District Court, Southern District of California, Case No. 07CV2049 WQH
24 JMA. No such declaration was filed in that case.
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1 11. It is true that, in some previous TCPA matters, I filed Declarations by my client to
2 support the initial complaint filed therewith. That is because the clerk's office at the San Diego
3 Superior Court ("civil business office") erroneously required same before they would accept a
4 new filing. After jumping through the unnecessary hoop several times, as in *James M. Kinder v.*
5 *Allied Interstate*, San Diego Superior Court Case No. GIC 850543 (suing for violations of the
6 Telephone Consumer Protection Act), which filing was approved by then Presiding Judge Janis
7 Sammartino on February 26, 2007, the civil business office no longer required my client to
8 submit a declaration to be approved by the Presiding Judge. At some point on a date I cannot
9 recall, a clerk with the court stated that the court's in-house legal department had advised them
10 that as long as my client filed through counsel, no approval from the Presiding Judge was
11 necessary. Since then, no such approval has been required by the court in any new filing by Mr.
12 Kinder while he was represented by counsel.
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16 12. The fact that no court approval should have ever been required when my client
17 filed through counsel was ratified by then Presiding Judge Sammartino on June 28, 2007. In
18 *James M. Kinder v. Adecco, Inc.*, San Diego Superior Court Case No. GIC882000, Adecco filed
19 a Notice of Vexatious Litigant, relying on *In re Shieh*, (1993) 17 Cal.App.4th 1154, affecting an
20 automatic stay of that litigation. I timely filed an opposition and Judge Sammartino lifted the
21 stay, holding that the pre-filing order did not apply because Mr. Kinder had filed that action
22 through counsel and not *In Propria Persona*. A true and correct copy of Judge Sammartino's
23 Order is attached hereto as Exhibit A.
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1 I declare under penalty of perjury under the laws of the State of California and the laws of
2 the United States that the foregoing is true and correct and that this declaration was executed by
3 me on April 11, 2008 in San Diego, California.

4 DATED: April 11, 2008

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6 By: /s/ Chad Austin
7 CHAD AUSTIN, Esq., Attorney for
8 Plaintiff, JAMES M. KINDER
9 Email: chadaustin@cox.net
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